

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUSSELL K. SHOWERS,)	
)	
Petitioner,)	Civil Action No. 11-950
)	
v.)	District Judge Joy Flowers Conti
)	Magistrate Judge Cynthia Reed Eddy
)	
SUPERINTENDENT JOHN)	
KERESTES ; DISTRICT ATTORNEY)	
OF WESTMORELAND COUNTY;)	
and the ATTORNEY GENERAL OF)	
THE STATE OF PENNSYLVANIA,)	
)	
Respondents.)	

MEMORANDUM ORDER

On July 21, 2011, the above-captioned case was initiated by Russell K. Showers (“Petitioner”) by the filing of a Motion for Leave to Proceed *In Forma Pauperis* accompanied by a Petition for Writ of Habeas Corpus (ECF No. 1) and was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

The magistrate judge filed a Report and Recommendation on August 27, 2012 (ECF No. 24) recommending that the petition for writ of habeas corpus be dismissed as untimely and that a certificate of appealability be denied. On September 14, 2012, Petitioner filed objections to the Report and Recommendation. (ECF No. 25.) In the objections Petitioner argues that contrary to the magistrate judge’s conclusion, he did present evidence of adjudications of incompetency or institutionalization. He points to Exhibit B (ECF No. 6-2 at 1-22) which he asserts contains medical records showing “he was hospitalized several times in an inpatient mental health during the 1980’s & 1990’s....” (ECF No. 25 at 2.)

Those hospitalizations, however, did not occur during the periods at issue here – February 20, 2008 – April 6, 2010 – when the statute of limitations was running.

The medical records included in Exhibit B relate to a time frame from 2002 – 2003 and do not include information about mental health evaluations or medications he was taking during the period in which the statute of limitations was running (2008 – 2010). Exhibit B, therefore, does not show how his ability to make a timely filing was adversely affected during the relevant limitations period. Petitioner's objections do not undermine the recommendation of the magistrate judge.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 27th day of September, 2012:

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 24) is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

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